IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10252 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAMBO INTERNATION EXHIBITION ORGANIZER

Versus

PRESIDENT

Appearance:

1. Special Civil Application No. 10252 of 2004

MR UTPAL M PANCHAL for Petitioner No. 1

MS ROOPAL R PATEL for Respondent No. 1

MR SIRAJ GORI, Ld. AGP for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 04/10/2004

ORAL JUDGEMENT

Rule. Mr.Gori, learned AGP waives service of

rule on behalf of respondent No.2. With the consent of the parties the matter is taken up for final hearing today.

2. The petitioner has preferred this petition challenging the order dated 12.8.2004 Annexure "B" passed by respondent No.2 i.e. Jt. Charity Commissioner and the petitioner has also challenged the communication dated 18.8.2004 Annexure "C" issued by respondent No.1 on the basis of the order passed by the Charity Commissioner.

3. Heard Mr.Panchal, learned Counsel for the petitioner, Ms.Patel, learned Counsel for respondent No.1 and Mr.Gori, learned AGP for respondent No.2.

4. The short facts appear to be that respondent No.1 is a Trust formed for educational purpose and is running Sharda Yatan School and is having a plot of land which is bearing Survey No.47 of Village Piplod. As the petitioner was desirous to use the same for amusement park for the period from 5.9.2004 to 22.10.2004 on licence basis respondent No.1 Trust had considered the request and ultimately on 26.5.2004 a resolution was passed by the Trust for giving the same to the petitioner on licence basis for the aforesaid period for the consideration of Rs.1 lac. It appears that one of the interested persons namely Vipul Jasabhai Patel moved the application to the Charity Commissioner under Section 41A being Application No.21/2004. It is the case of the petitioner that Vipul Jasabhai is the rival of the petitioner. Be that as it may, the learned Charity Commissioner considered the matter and as per the order dated 12.8.2004 the application of Vipul Jasabhai is rejected and the said order dated 12.8.2004 passed by the Charity Commissioner upon the application of Vipul Jasabhai Patel is produced at Annexure "B". It appears that while passing the aforesaid order, the observations were made by the learned Charity Commissioner for inviting offer from the public at large for utilisation of the plot in question on licence basis and to submit the report for such purpose and, therefore, based on such observations made in the order, respondent No.1 Trust communicated to the petitioner for cancellation of the licence and under the circumstances, the petitioner has approached this Court by preferring this petition.

It was the case of the petitioner when the petition was preferred, that part of the material is loaded and he is yet to unload certain material and has to cover the goods which are lying on the open land and

as it was a rainy season, on 19-8-2004 when this Court issued notice, by ad-interim order permission was given to the petitioner to unload and cover his goods over the land without creating any additional right in favour of the petitioner. The said ad-interim order was passed on condition that the petitioner deposits an amount of Rs.3 lac by demand draft/pay order with respondent No.1 Trust provisionally subject to the finalisation of the issue by this Court or by the competent authority as finalised by further orders. Thereafter on 27.8.2004 this Court had passed the following order:

" Heard Mr. Panchal for the petitioner, Mr. H.D. Dave, learned Assistant Government Pleader for the Charity Commissioner and Ms. Patel for the respondent No.1.

It appears that there is no authenticated material produced on record to show that what could be the actual amount or probable amount if such property is given on the same terms and conditions to any other party. As per the contention of the Trust in comparison to the agreed amount of Rs.1 lakh, the petitioner is already directed to deposit the amount of Rs.3 lakhs. However, the fair period is from 5th September 2004 to 22nd October 2004, i.e. for a period of 47 days. Therefore, the petitioner can be allowed to continue with the further activities but upon an undertaking filed before this Court on or before 1st September 2004 that in case any additional amount is to be deposited or paid towards the utilisation of the plot, the petitioner shall make the payment of the same within one week from the finalisation of such amount.

S.O. to 2nd September 2004. In the meantime, it would be open to the respondent Trust as well as to the Charity Commissioner to place on record the tentative market rent of the plot for utilisation for 47 days with the basis for such figure."

5. With a view to see that no loss is caused to the Trust and as there was no time left for undertaking the exercise for inviting bids, more particularly because the contract in part was already performed and the petitioner had occupied the land, the report of the Charity Commissioner was called for by this Court and after considering the report and after hearing the learned

Counsel appearing for the parties dated 9.9.2004 this Court had passed the following order:

"1. Upon further hearing the learned counsel appearing for the petitioner as well as Mr. Gori, the learned Assistant Government Pleader and Ms. Patel for the Trust, it appears that there is no dispute on the point that the market value of the property is around Rs.7.5 Crores. The Charity Commissioner, through Government Pleader has placed on record a report dated 1st September 2004, which refers to the offer of one land known as Vanita Vishram ground for Rs.33 lakhs. Mr. Panchal, learned counsel appearing for the petitioner submitted that there is a distance of about 12 kms. between the two plots, and he further submitted that the plot of Vanita Vishram ground is in a posh locality of Surat, and the area is roughly three times in comparison to the plot in question. He submitted that the offer was given for Rs.33 lakhs by the rival of the petitioner, but the said offer is not accepted, and the offer materialized is not of Rs.33 lakhs.

2. Under the above circumstances, as the fair has already started and no proper material is placed by either side to arrive at a reasonable amount which could be fetched for utilisation of the plot, this Court is required to consider the approximate market value for the purpose of assessing the rent for 47 days. Therefore, if the same is considered on the basis that roughly 8% to 10% will the rental value of land in question, and accordingly for 47 days, the figure would be around Rs.7 lakhs. The petitioner has filed undertaking for depositing of the balance amount and accordingly Mr. Panchal, the learned counsel for the petitioner states that if the amount of Rs. 7 lakhs is finalized by this Court, the petitioner may be given some more time to deposit the amount, and he declares before the court that the petitioner shall deposit the amount latest by 30th September 2004 with the Trust.

3. Under the above circumstances, so far as finalization of the rent for 47 days is concerned, it is fixed at Rs.7 lakhs and the petitioner is directed to deposit the balance amount of Rs.4 lakhs with the Trust latest by 1st

October 2004. However, the Trust shall not utilize the said amount and shall deposit the entire amount deposited by the petitioner under orders of this Court shall be kept in a separate Bank Account and its utilization shall be subject to further orders, which may be passed by this Court.

4. The Charity Commissioner as well as the Trust shall submit a report for better utilization of the funds for the educational activities which is being undertaken by the Trust.

5. S. O. to 4th October 2004 for passing further orders."

6. Mr.Panchal, learned Counsel for the petitioner submitted that the amount of Rs.4 lac by cheque No.18136 drawn on Surat District Coop. Bank in favour of respondent No.1 Trust was submitted on 30.9.2004 and on behalf of the petitioner he states that the cheque must have been cleared by this time. Therefore, in all the petitioner had to deposit an amount of Rs.7 lac which, as per the above referred order, has been paid by the petitioner to respondent No.1 Trust. The period of licence is to expire on 22-10-2004 and pending the petition in view of the aforesaid orders passed by this Court, the petitioner has continued to utilize the plot on licence basis and as such respondent No.1 Trust had no objection for such purpose and the petitioner, therefore, would be entitled to utilize the plot on licence basis upto 22/10/2004.

7. Mr.Panchal, learned Counsel for the petitioner, submitted that the petitioner has applied for two days extension to respondent No.1 Trust, because of the interruption on account of the orders passed in the proceedings of the Charity Commissioner.

However, I find that the petitioner would not be entitled to extension for two days on such ground as the Charity Commissioner issued certain directions with a view to see that the interest of the Trust is protected. Further, as observed earlier, when the orders came to be passed no time was left and it was practically impossible to comply with such directions because if the advertisement is given and the offers were invited, it may take some more time and prior that to the petitioner as well as respondent No.1 Trust had already partly acted upon the contract and, therefore, considering the facts

and circumstances this Court had issued directions with a view to see that the Trust's interest is sufficiently protected and at the same time the petitioner is put to least jeopardy.

9. The aspects which deserve consideration is that the Trust had accepted the offer of Rs.1 lac, whereas the ultimate realisation of the amount for the very period and for the very land has come to Rs.7 lac. There is no authenticated, reliable material available with this Court regarding the exact probable market value or market price for giving the plot on licence basis for the period from 5th September, 2004 to 22nd Oct., 2004 and for the reasons recorded in the earlier order dated 9.9.2004 the amount of Rs.7 lac is arrived at which is ultimately, as declared before this Court, duly paid by the petitioner to respondent Trust. Therefore, it is apparent that respondent No.1 Trust had agreed in fixing the licence fee of the plot in question with the petitioner much lower in comparison to the amount actually realised.

10. I would have taken serious view of the matter for directing the inquiries of the proceedings against the Trustees of respondent No.1 Trust for such a callous approach on the part of the Trustees while taking decision for giving the plot on licence basis without inviting offer from the public at large and without making effort to realise the maximum amount for the interest of the Trust, however, Ms.Patel, for respondent No.1 has declared before this Court that henceforth, respondent No.1 Trust, whenever such question arises for giving plot on licence basis, shall initiate the process well in time and shall invite offers from the public at large and keeping in view the interest of the Trust and with a view to realise maximum amount, and shall take appropriate decision and, therefore, I find that as though there was callous approach on the part of the Trustees of respondent No.1 Trust, but as in reality the amount of Rs.7 lac is recovered, it may not be necessary for this Court at this stage to direct for initiation of action against the Trustees of the Trust, more particularly in view of the declaration made on behalf of respondent No.1 Trust.

11. In view of the aforesaid, the observations made by the Charity Commissioner, directing respondent No.1 Trust to invite offer from the public at large for utilization of plot from 5.9.2004 to 22.10.2004 would not survive, save and except that henceforth respondent No.1 Trust shall not take decision to give the plot on licence basis to any person without inviting offer from the

public at large by giving proper advertisement in the newspaper and after considering the offer received, the appropriate decision shall be taken, keeping in view the larger interest of the Trust and by making efforts to realise the maximum amount for such purpose.

12. It is needless to state that the amount so realised by respondent No.1 Trust is to be utilized for the purpose of the objects of the Trust, which essentially are educational purpose of running Sharda Yatan School. However, Ms.Patel for respondent No.1 Trust submitted that as the plot is an open one and with a view to see that the encroachment may not be made over the plot, respondent No.1 Trust would require the amount for such purpose. Under the circumstances, since the total amount realised by respondent No.1 Trust is of Rs.7 lac as against the agreed amount of Rs.1 lac, it is observed that respondent No.1 shall be at liberty to utilize the amount not exceeding Rs. 1 lac for protection of the plot in question and/or for development of the plot in question, but the balance amount of Rs.6 lac shall be used for the purpose of the objects of the Trust which is essentially for educational purpose of running Sharda Yatan School. After utilization of said amount, respondent Trust shall accordingly report and intimate to the Charity Commissioner in this regard.

13. In view of the aforesaid, I find that the following directions shall meet with the ends of justice:

1) The agreed amount of Rs.1 lac between the petitioner and the respondent Trust shall stand substituted by Rs.7 lac as the contract price for the utilisation of the plot from 5.9.2004 to 22-10-2004 and consequently the observations and directions of the Charity Commissioner in this regard shall not survive for the said period. However, in future the respondent Trust is directed to act as per the declaration made before this Court and shall not give the plot on licence basis to any person without inviting offer from the public at large and the decision shall be taken as observed hereinabove, keeping in view the larger interest of the Trust and by making efforts to realise the maximum amount.

2) Respondent No.1 Trust shall be at liberty to realise the amount of Rs.1 lac towards the protection of the plot as observed hereinabove and Rs.6 lac towards the objects of the Trust for educational purpose of running Sharda Yatan

School. After utilization of the said amount the proper report shall be submitted to respondent No.2 Charity Commissioner within a period of two months from the completion of the use of the amount for the respective purposes as the case may be.

14. The petition is allowed to the aforesaid extent Rule is made absolute accordingly. Considering the facts and circumstances, there shall be no order as to costs.

13-10-2004 (Jayant Patel, J.)

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